



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-201-846]

Sugar from Mexico: Notice of Court Decision Regarding Amendment to the Agreement Suspending the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 18, 2019, the United States Court of International Trade (CIT) issued a final judgment in *CSC Sugar LLC v. United States*, Ct. No. 17-00214, Slip Op. 19-131 (CIT October 18, 2019) (*CSC Sugar II*). Commerce is notifying the public of the CIT's ruling that Commerce's 2017 amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Agreement) must be vacated. Commerce intends to take action to implement the CIT ruling by November 18, 2019.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon, Bilateral Agreements Unit, Office of Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0162.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2014, Commerce and the Government of Mexico (GOM) signed the CVD Agreement.¹ Between June 2016 and June 2017, Commerce and the GOM held

¹ See *Sugar From Mexico: Suspension of Countervailing Investigation*, 79 FR 78044 (December 29, 2014).

consultations to address concerns raised by the domestic industry and to ensure that the CVD Agreement met the statutory requirements for a suspension agreement, *e.g.*, that suspension of the investigation was in the public interest, including the availability of supplies of sugar in the U.S. market, and that effective monitoring was practicable. The consultations resulted in Commerce and the GOM signing an amendment to the CVD Agreement on June 30, 2017, which was subsequently published in the *Federal Register*.²

CSC Sugar LLC (CSC Sugar) challenged Commerce's determination to amend the CVD Agreement by contending that Commerce did not meet its obligation to file a complete administrative record.³ Specifically, CSC Sugar argued that Commerce failed to memorialize and include in the record *ex parte* communications between Commerce officials and interested parties (including the domestic sugar industry and representatives of Mexico) as required by section 777(a)(3) of the Tariff Act of 1930, as amended (the Act).⁴

The CIT agreed with CSC Sugar and ordered Commerce to supplement the administrative record with any *ex parte* communications regarding the *CVD Amendment*.⁵ CSC Sugar subsequently filed a motion for judgment on the agency record arguing that Commerce's failure, during the consultations period, to maintain contemporaneous *ex parte* communication memoranda, in accordance with section 777(a)(3) of the Act, could not be adequately remedied by Commerce's delayed and incomplete supplementation of the record.⁶

² See *Sugar From Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 82 FR 31942 (July 11, 2017) (*CVD Amendment*).

³ See *CSC Sugar II* at 4.

⁴ *Id.*

⁵ *Id.* (citing *CSC Sugar LLC v. United States*, 317 F. Supp. 3d 1322, 1326 (CIT 2018)).

⁶ See *CSC Sugar II* at 4.

The CIT found that Commerce’s failure to follow the recordkeeping requirements of Section 777 of the Act cannot be described as “harmless.”⁷ The CIT found that this recordkeeping failure substantially prejudiced CSC Sugar.⁸ On that basis, the CIT stated that the *CVD Amendment* must be vacated.⁹

The *CVD Amendment* remains in force until Commerce takes action to implement the CIT’s ruling. The CIT’s rules establish an automatic 30-day stay of proceedings to enforce a judgment.¹⁰ Accordingly, Commerce intends to implement the CIT’s ruling by November 18, 2019.¹¹

Dated: October 25, 2019.

Jeffrey I. Kessler
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for Enforcement and Compliance

⁷ *Id.* at 11-12.

⁸ *Id.* at 12.

⁹ *Id.*

¹⁰ See CIT Rule 62(a) (“Except as stated in this rule or as otherwise ordered by the court, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 30 days have passed after its entry.”).

¹¹ See CIT Rule 6(a)(1). In this case, the 30th day after October 18 is Sunday, November 17.

